

## **4/27/07 City Staff Draft of the Mississippi River Critical Area Regulations**

### **Proposed Amendments to the River Corridor Chapter in the Saint Paul Zoning Code - Critical Area Overlay Zoning Districts**

This draft is based on the recommendations of the Mississippi River Critical Area Task Force. The mark-ups (underlining for additions, ~~strike-throughs~~ for deletions) are based on the draft ordinance proposed by the Critical Area Task Force, not based on the existing River Corridor zoning adopted in 1982.

#### **ARTICLE II. 68.200. CRITICAL AREA OVERLAY DISTRICTS**

##### **Division 1. 68.210. General Provisions and Definitions**

##### **Sec. 68.211. Authority, intent and purpose.**

- (a) Article II, Critical Area Overlay Districts, is enacted pursuant to the authority granted to the municipality in Minnesota Statutes 116G, which delegates responsibility to local government units to adopt regulations for protection of a designated critical area. The Mississippi River Corridor is a designated critical area under Governor's Executive Order No. 79-19.
- (b) It is the purpose of this article:
  - (1) To protect and preserve the Mississippi River Corridor as a unique and valuable resource for the benefit of the health, safety and welfare of the citizens of the city, state, region, and nation;
  - (2) To prevent and mitigate irreversible damage to the Mississippi River Corridor;
  - (3) To protect and preserve the Mississippi River Corridor as an essential element in the federal, state, regional and local recreation, transportation, sewer and water systems;
  - (4) To maintain the river corridor's value and utility for residential, commercial, industrial and public uses, where appropriate;
  - (5) To protect and preserve the Saint Paul Mississippi River Corridor's biological and ecological functions; and
  - (6) To preserve and enhance the Saint Paul Mississippi River Corridor's natural, aesthetic, cultural, scientific and historic values.

##### **Sec. 68.212. Conflicting regulations.**

Whenever any provision of Article II, Critical Area Overlay Districts, conflicts with any other provision of this code, the more restrictive provision shall govern.

##### **Sec. 68.213. Other local, regional, state, and federal regulations.**

In addition to the requirements of this article, all uses and development shall be subject to all other applicable local, regional, state, and federal permits, laws and regulations.

#### **Sec. 68.214. Severability.**

If any section, clause, provision, or portion of this article is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this article shall not be affected thereby.

#### **Sec. 68.215. Definitions.**

Terms defined elsewhere in the zoning code shall have the meanings as therein defined. The following terms shall have the meanings ascribed to them herein.

*Bluff.* A high, steep, natural topographic feature, even if altered, such as a broad hill, cliff, or embankment rising above the river corridor floodplain with more than ~~sixteen (16)~~ twenty-five (25) feet total vertical rise, an average slope exceeding eighteen (18) percent between the bluff toe and a point ~~than sixteen (16)~~ twenty-five (25) feet or more above the bluff toe, and a continuous area of more than ~~two hundred (200) square feet~~ one (1) acre regardless of property boundaries.

*Bluff face.* That portion of a bluff, between the bluffline and the bluff toe, with a slope exceeding eighteen (18) percent.

*Bluffline (top of a bluff).* A line along the top of a bluff, shown on the critical area overlay zoning district maps and requiring field verification, such that the slope below the line exceeds eighteen (18) percent and the slope above the line is eighteen (18) percent or less.

*Bluff toe (bottom of a bluff).* A line along the bottom of a bluff, shown on the critical area overlay zoning district maps and requiring field verification, such that the slope above the line exceeds eighteen (18) percent and the slope below the line is eighteen (18) percent or less.

*Development (Critical Area Overlay Districts only).* The making of any material change in the use or appearance of any structure or land including, but not limited to: a reconstruction, alteration of the size, or material change in the external appearance, of a structure or the land; a change in the intensity of use of the land; alteration of a shore or bank of a river, stream, lake or pond; a commencement of drilling (except to obtain soil samples); mining or excavation; demolition of a structure; clearing of land as an adjunct to construction; deposit of refuse, solid or liquid waste, or fill on a parcel of land; or the dividing of land into two (2) or more parcels.

*Mississippi River Corridor.* That area of the city within the boundaries of the Mississippi River Corridor Critical Area, established by Executive Order No. 79-19.

*Natural topographic feature.* For the purpose of defining bluff, steep slope, and very steep slope in this section, does not mean unaltered, but simply distinguishes these topographic features from constructed things such as levees and road embankments.

*Ordinary high water level.* A mark delineating the highest water level that has been maintained for a sufficient period of time to leave evidence of the level upon the landscape. It is commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. When the ordinary highwater level is not evident, setbacks shall be measured from the stream bank of the main channel, adjoining side channels, backwater and sloughs.

*Slope, steep.* A natural topographic feature with an average slope over twelve (12) percent measured over a horizontal distance of fifty (50) feet or more, with more than six (6) feet total vertical rise and a continuous area of more than one thousand (1000) square feet regardless of property boundaries.

*Slope, very steep.* A natural topographic feature with an average slope over eighteen (18) percent measured over a horizontal distance of fifty (50) feet or more, with more than nine (9)

feet total vertical rise and a continuous area of more than ~~two hundred (200)~~ one thousand (1000) square feet regardless of property boundaries.

*Top of very steep slope.* A line along the top of a very steep slope such that the slope below the line exceeds eighteen (18) percent measured over a horizontal distance of fifty feet, and the slope above the line is eighteen (18) percent or less.

#### **Sec. 68.216. Establishment.**

Article II, Critical Area Overlay Districts, applies to that area of the city within the boundaries of the designated Mississippi River Corridor Critical Area. For the purposes of this code, the Critical Area is hereby divided into the CA1 Critical Area Rural Open Space Overlay District, CA2 Critical Area Urban Open Space Overlay District, CA3 Critical Area Urban Developed Overlay District, and CA4 Critical Area Urban Diversified Overlay District. These Critical Area Overlay Districts are shown on the critical area overlay zoning district maps accompanying this code, which are hereby made a part of this code as if the information set forth thereon were fully described herein.

[PED STAFF RECOMMENDS THE FOLLOWING CHANGES ON THE CRITICAL AREA OVERLAY MAPS:

1. **Shepard-Homer industrial area.** Change the existing industrial properties bounded by Shepard Road, Rankin, the railroad tracks, and the eastern boundary of Johnson Brothers Liquor. **Change from CA3 to CA4.** Allow the industrial uses to continue as normal permitted uses under zoning, as opposed to the Critical Area Task Force's proposal that industrial uses in this location be allowed to continue as an exception to a general prohibition against industrial uses in CA3 zones.
2. **Elway residential buildings.** There are two residential buildings, a three-story apartment building and a mid-rise condo building. They are unlike the neighborhoods zoned CA3 Urban Developed because they are not part of a standard city grid neighborhood. CA3 makes the condo building nonconforming as to height. The property has been zoned Urban Diversified since 1982. **Change from CA3 to CA4.**
3. **Crosby Lake Business Park area.** The Crosby Lake Business Park was redeveloped by the Port Authority about a decade ago. Four of the six large parcels in this industrial redevelopment are within the Critical Area, that is, between the railroad tracks and the bluff. As with the Shepard-Homer area, the Critical Area Task Force proposes to zone the property CA3 where industrial uses are prohibited, but then include a specific exception to allow industrial uses in the Crosby Lake Business Park. Staff recommends the straight forward approach of zoning the property CA4 where industrial use is permitted. **Change from CA3 to CA4.**
4. **Victoria Park redevelopment.** The part of Victoria Park (formerly known as the Koch-Mobil site) between the railroad tracks and Shepard Road is in the Critical Area and is projected to be a later phase of the redevelopment. The City's adopted zoning for the property shows two or three tall residential buildings and roughly 60 townhouses, but there are no immediate development plans for this portion of the site and some regulatory flexibility may be desirable. **Change from CA3 to CA4.**
5. **Railroad property in Pig's Eye area.** Staff needs to review maps again with railroad representatives to make sure the zoning boundaries are correct and consistent with previous legal settlements about environmental remediation of the old dumpsite.
6. **Ford site.** Staff supports CA2 on the river side of Mississippi River Blvd. (MRB). The power plant operations are permitted in CA2, if not by an exemption from local zoning in state law. On the east side of Mississippi River Blvd., **staff has laid out four alternatives for public review and comment:** (A) Critical Area Task Force's recommendation, which is CA3; (B) Putting a 300-foot strip of CA3 along Mississippi River Blvd. with remainder "undesignated" in the interim while the Ford Site Planning Task Force is working on a plan, and using the CA3 regulations for the undesignated area during the interim; (C) **The Ford Site Planning Task Force and PED staff recommendation, which is to mark the entire Ford plant site east of Mississippi River Blvd. as "undesignated" until a plan is approved for the property, and use the CA4 regulations for the undesignated area during the interim;** and (D) All CA4, which is the least restrictive Critical Area zone.

[See attached maps.]

### **Sec. 68.217. Compliance with regulations.**

Within the Critical Area Overlay Districts, no structure, fill or material shall hereafter be located, constructed, extended, or altered, and no new use or change shall be made or maintained of any building, structure or land, or part thereof, except in conformity with the provisions of Article II, Critical Area Overlay Districts, and other applicable laws and regulations. Legal nonconforming uses and structures existing on the effective date of this article or amendment thereto may be permitted to continue as provided under local, state, and federal regulations.

## **Division 2. 68.220. Administration**

### **Sec. 68.221. Permits.**

No permit shall be issued for erection, addition, alteration, or use of any building, structure or land within the Critical Area Overlay Districts that is not in conformance with the provisions of this article.

### **Sec. 68.222. Site plan review.**

- (a) A site plan shall be submitted to and approved by the planning commission before a development permit is issued for site work or the erection or enlargement of structures for all development except a single one-family dwelling and associated accessory structures that do not affect steep slopes. The site plan shall include soil types, topography, a vegetation inventory according to the requirements of section 68.243(c), expected changes in the site resulting from the development, measures to address adverse environmental effects, and additional information as may be determined by the zoning administrator as necessary to ensure consistency with this article. When necessary to determine whether development affects steep slopes or meets bluff setback requirements, and for development that affects steep slopes, the site plan shall include ground vertical contour intervals of no more than two (2) feet sealed by a licensed Minnesota architect, engineer, landscape architect or land surveyor. For development that affects steep slopes, the zoning administrator may require submission of a report by a licensed geotechnical or soils engineer showing that the soil types and geology are suitable for the proposed development, how the development will be accomplished without increasing erosion, and how vegetation will be managed to control runoff. If material significant changes are made after the site plan is approved, the a revised site plan shall be resubmitted to and must be approved by the planning commission, before construction goes beyond the original permit. Notification shall be sent to the site plan review list if the revision involves an issue the reviewer is tracking or if it does not meet the intent of Chapter 68 or the Critical Area overlay district where it is located. Work on that portion of the site to be revised shall be discontinued until the revision is approved.
- (b) The site plan shall be approved only if it adequately assesses and minimizes adverse environmental effects and maximizes beneficial environmental effects. In approving a site plan, conditions may be imposed where deemed reasonable and necessary to protect the public interest and comply with the spirit and intent of the provisions of this article. Such conditions may include, but are not limited to, the following: retention and planting of vegetation; reduced lot coverage and impervious surfacing; and design and location of buildings, drives and parking areas to fit the natural topography.

### **Sec. 68.223. Conditional Use Permits.**

An application for a conditional use permit required by this article shall include a site plan meeting the requirements of section 68.222(a). A conditional use permit may be granted only when the proposed use is consistent with the intent and purpose of this article, compatible with uses in the immediate vicinity, and permitted by all other applicable regulations. In approving a conditional use permit, conditions may be imposed as described for site plans in section 68.222(b).

### **Sec. 68.224. Variances.**

An application for variance to the provisions of this article shall include a site plan meeting the requirements of section 68.222(a). In addition to the requirements for zoning variances in MN Statutes section 462.357, the burden of proof shall rest with the applicant to demonstrate conclusively that the variance will not result in a hazard to life or property and will not adversely affect the safety, use or stability of a public way, slope or drainage channel, or the natural environment. If an application for a variance claims economic hardship as a basis for the variance, the applicant shall submit a pro forma economic feasibility analysis to explain the claim. In granting a variance, conditions may be imposed as described for site plans in section 68.222(b).

### **Sec. 68.225. Notify department of natural resources, MNRRA, and watershed districts.**

A copy of the application for a development permit for which the city is required to hold a public hearing shall be mailed to the department of natural resources critical area program at least ~~thirty (30)~~ fifteen (15) days before city action on the application. Notice of such application shall be mailed to the Mississippi National River and Recreation Area and the watershed district with jurisdiction over the area at least fifteen (15) days before a public hearing on the application. A copy of all decisions granting such permits or approvals shall be forwarded to the department of natural resources critical area program within ten (10) days of such action.

### **Sec. 68.226. Amendments.**

All amendments to this article shall be made in the manner set forth in Minnesota Statutes, Sections 463.357 and 116G.10, MN Rules, part 4410.9500, and Governor's Executive Order No. 79-19. All amendments to this article, including amendments to the critical area overlay zoning district maps, shall be submitted to the department of natural resources critical area program and approved by the commissioner of natural resources prior to adoption. The department of natural resources critical area program shall be given thirty (30) days' written notice of all hearings to consider an amendment to this article. Such notice shall include a draft of the ordinance amendment under consideration.

## **Division 3. 68.230. Critical Area Overlay Districts**

### **Sec. 68.231. Intent, CA1 Critical Area Rural Open Space Overlay District.**

Lands and waters within this district shall be used and developed to preserve their open, scenic and natural characteristics and ecological and economic functions. Undeveloped islands shall be maintained in their existing natural state; however, the transportation function of the river shall be maintained and preserved.

**Sec. 68.232. Intent, CA2 Critical Area Urban Open Space Overlay District.**

Lands and waters within this district shall be managed to conserve and protect the existing and potential recreational, scenic, natural and historic resources and uses within this district for the use and enjoyment of the surrounding region. Open space shall be provided in the open river corridor for public use and the protection of unique natural and scenic resources. The existing transportation role of the river in this district will be protected.

**Sec. 68.233. Intent, CA3 Critical Area Urban Developed Overlay District.**

Lands and waters within this district shall be maintained largely as residential areas. The expansion of existing and development of new industrial, commercial, and other non-residential or non-recreational uses shall be limited to preserve and enhance the residential character of this district.

**Sec. 68.234. Intent, CA4 Critical Area Urban Diversified Overlay District.**

Lands and waters in this district shall be used and developed to maintain the present diversity of commercial, industrial, residential and public uses of the lands, including the existing transportation use of the river; to protect historical sites and areas, natural scenic and environmental resources; and to expand public access to and enjoyment of the river. New commercial, industrial, residential and other uses may be permitted if they are compatible with these goals.

**Sec. 68.235. Permitted uses.**

The following uses shall be permitted within the Critical Area Overlay Districts, except uses specifically prohibited in section 68.236 or specifically listed as conditional uses in section 68.237, provided that the use complies with all other applicable laws and regulations: residential uses, civic and institutional uses, commercial uses, public services and utilities, signs, and transportation facilities; and industrial uses in the CA4 Critical Area Urban Diversified Overlay District.

**Sec. 68.236. Prohibited uses.**

(a) The following uses shall be prohibited in all Critical Area Overlay Districts:

- (1) advertising sign (except those located on bus stop shelters, courtesy benches, and newsstands)
- (2) dump, sanitary landfill
- (3) feedlot
- (4) meat packing plant
- (5) metal shredder, large
- (6) mining
- (7) motor vehicle salvage operation
- (8) refining of petroleum or gasoline
- (9) rendering plants and tanning
- (10) stockyard

- (b) The following uses shall be prohibited in the CA1 Critical Area Rural Open Space Overlay District, CA2 Critical Area Urban Open Space Overlay District, and CA3 Critical Area Urban Developed Overlay District:
  - (1) industrial uses ~~(except that industrial uses shall be permitted in the CA3 district south of Ford Parkway and north of Hampshire Avenue extended to Mississippi River Boulevard, and between Rankin Street and Kay Avenue extended to Shepard Road)~~ except for commercial wood chipping in the CA1 Critical Area Rural Open Space Overlay District (see conditional uses)
  - (2) auto impound lot
  - (3) barge repair and cleaning facility
  - (4) intermodal freight yard, auto marshaling yard
  - (5) municipal incinerator
- (c) The following uses shall be prohibited in the CA2 Critical Area Urban Open Space Overlay District and CA3 Critical Area Urban Developed Overlay District:
  - (1) barge slip, barge fleeting area
  - (2) sewage treatment plant

**Sec. 68.237. Conditional uses.**

- (a) The following uses shall require a conditional use permit in the CA4 Critical Area Urban Diversified Overlay District.
  - (1) concrete, asphalt and rock crushing facility
  - (2) recycling processing center, outdoor
- (b) Commercial wood chipping shall require a conditional use permit in the CA1 Critical Area Rural Open Space Overlay District
- ~~(b)~~ Conditional uses are permitted only upon application and issuance of a conditional use permit by the planning commission. Except for the portion of the use that requires a riverfront location, conditional uses shall be set back at least one hundred (100) feet from the ordinary high water level, and vegetation shall be established and maintained to appropriately screen the facility from view from the river. The application for a conditional use permit shall include a site plan showing the location of buildings, areas of outdoor processing and storage, fences, walls and landscaping. A narrative shall accompany the plan stating the measures the applicant will take to address any dust, erosion, noise, or other potentially adverse effects, and satisfactory measures shall be required and implemented.

Division 4. 68.240. Critical Area Standards and Regulations

**Sec. 68.241. Objectives.**

The objective of standards and criteria is to maintain the aesthetic integrity and natural environment of the river corridor in conformance to the St. Paul Mississippi River Corridor Plan by reducing the effects of poorly planned shoreline and bluffline development; providing sufficient setback for sanitary facilities; preventing pollution of surface and groundwater;

minimizing flood damage; preventing soil erosion; and implementing metropolitan plans, policies and standards.

**Sec. 68.242. Protection of riverbanks, floodplains, wetlands and bluffs.**

- (a) *Generally.* Development shall be conducted so that the smallest practical area of land be developed at any one time and that each area be subjected to as little erosion or flood damage as possible during and after development.
- (b) *Location of structures and uses.*
  - (1) New commercial and industrial development in the floodplain or within three hundred (300) feet of the ordinary high water level, except for the area of downtown Saint Paul along the river's left descending bank from Chestnut Street to the Lafayette/Highway 52 bridge, shall have a relationship to the river, a need for a riverfront location, and/or enhance the river environment based on the following criteria: having an economic or operational need for a river location, supporting the attractiveness of surrounding neighborhoods, sustaining the economic vitality of riverfront improvements, offering public access to and along the river, maintaining views of the river, cleaning up polluted areas on the site, and meeting or exceeding natural resource policies in the city's adopted comprehensive plan. Expansions of existing uses in the floodplain or within three hundred (300) feet of the ordinary high water level are acceptable, consistent with the natural resource protection requirements of this article.
  - (2) Structures shall be set back from the ordinary high water level at least one hundred (100) feet, except those specified as exceptions in subsection (8) below.
  - (3) No commercial or industrial structures, other than ~~one family dwellings and associated accessory structures~~, and those uses specified as exceptions in subsection (8) below, shall be permitted on steep slopes.
  - (4) No structures, grading, or filling, except for those structures and uses specified in subsection (8) below, shall be permitted on very steep slopes.
  - (5) No structures, grading, or filling, except for those structures and uses specified as exceptions in subsection (8) below, shall be permitted on a bluff face, within forty (40) feet of a bluffline, or within fifteen (15) feet of a bluff toe. In the CA1 Critical Area Rural Open Space Overlay District and CA2 Critical Area Urban Open Space Overlay District, such structures shall be set back from the top of a very steep slope a distance equal to the sum of the height of the very steep slope and the height of the structure, to a maximum of forty (40) feet.
  - (6) To the greatest extent possible, transportation, utility and other transmission service facilities and corridors shall avoid the following:
    - a. Steep slopes.
    - b. Intrusions into or over streams, valleys and open exposures of water.
    - c. Intrusions into ridge crests and high points.
    - d. Creating tunnel vistas.
    - e. Wetlands.
    - f. Disturbing forests (route along the fringe rather than through them or, if



necessary, route through forests utilizing open areas in order to minimize cutting).

- g. Soils susceptible to erosion, which would create sedimentation and pollution problems.
  - h. Areas of unstable soils which would be subject to extensive slippages.
  - i. Areas with high water tables.
  - j. Open space recreation areas.
- (7) At river crossing points, public facilities, crossing corridors and other rights-of-way shall be consolidated, so that the smallest area possible is devoted to crossing.
- (8) Exceptions:
- a. Location of piers and docks shall be controlled by applicable state and local regulations.
  - b. The following are exceptions to the location requirements in subsections (2), (3), (4), and (5) above: fences and structures that do not require a building permit; bridges and bridge approach roadways; roads, driveways and railroads as minimally necessary; trails, sidewalks and stairways; scenic overlooks and public observation platforms; structures needed for transportation safety; essential service distribution systems; flood control structures; and navigational, commercial, industrial or permitted open space uses applied to that portion of the use requiring location on public waters.
  - c. A park structure less than one hundred (100) feet from the ordinary high water level and not listed as an exception in paragraph "b" above, shall be permitted only upon application for and issuance of a conditional use permit by the planning commission. The application for a conditional use permit shall include a site plan showing the location of the park structure and landscaping. A narrative shall accompany the plan stating the measures the applicant will take to address any dust, erosion, noise, or other potentially adverse effects, and satisfactory measures shall be required and implemented. Vegetation shall be established and maintained to appropriately screen the facility from view from the river.
  - ed. The area of downtown Saint Paul along the river's left descending bank from Chestnut Street to the Lafayette/Highway 52 bridge shall be an exception to the location requirements in subsections (3), (4), and (5) above.

(c) *Grading and filling.*

- (1) Grading and filling (when allowable) shall minimize site alteration and protect environmentally sensitive areas. Any site alteration shall be the minimum area necessary for development. Development shall fit existing topography and vegetation with a minimum of clearing and grading.
- (2) Grading or filling shall not begin until applicable erosion and sediment control measures have been implemented. Erosion and sediment control measures in accordance with appropriate best management practices shall be maintained during and after grading and filling. Erosion control measures and revegetation plans shall make maximum use of native vegetation. Rehabilitation slopes shall be stabilized

- with plant materials, normally should not exceed a 4:1 slope without good cause shown, and shall not exceed a 2:1 slope.
- (3) Grading or filling or any other substantial alteration of the natural topography shall be controlled in accordance with the following criteria:
- The smallest amount of bare ground shall be exposed for as short a time as feasible.
  - Temporary ground cover shall be used.
  - Methods to prevent erosion and trap sediment shall be employed.
  - Fill shall be stabilized.
  - All disturbed areas shall be restored with vegetation by the completion of the development.
- (4) Only fill free of chemical pollutants and organic wastes shall be used. Solid waste disposal and landfill is not permitted.
- ~~(5) Dredging for purposes of maintaining the river for navigation shall follow the most current state and federal regulations. All other dredging, when allowed, shall be limited as follows:~~
- ~~It shall be located in the areas of minimum vegetation.~~
  - ~~It shall not significantly change the water flow characteristics, or adversely affect significant fish and wildlife habitat or protected vegetation.~~
  - ~~The size of the dredged area shall be limited to the absolute minimum.~~
  - ~~Deposit of dredged material shall not result in a change in the current flow, or in destruction of vegetation or fish spawning areas, or in water pollution.~~

#### **Sec. 68.243. Management of vegetation.**

- (a) *Generally.* Development and vegetation shall be managed so as to: 1) provide for, protect and enhance visual buffering and ecosystem function; 2) control erosion and minimize runoff; 3) preserve, protect, enhance and restore the natural qualities of the river corridor; and 4) preserve, enhance and restore plant and wildlife habitats.
- (b) *Protection of vegetation.* Existing native and non-native, non-invasive vegetation, and wildlife habitat shall be protected and maintained to the greatest extent possible; ~~their disturbance shall be minimized.~~ Any new development shall be located on the site so as to maintain visual buffering and ecosystem function.
- (c) *Wildlife habitat.* Wildlife habitat shall be protected and maintained to the greatest extent possible and its disturbance shall be minimized. Endangered and threatened species of plants and animals identified in the Minnesota Department of Natural Resources (DNR) Natural Heritage Data Base shall not be disturbed. The planning or zoning administrator shall refer to the Minnesota DNR Natural Heritage Data Base when reviewing all building, fill or grading permits and subdivision applications for properties in the Critical Area Overlay District. If the property is identified in the Minnesota DNR Natural Heritage Data Base as potentially having endangered or threatened species, a site survey identifying the location of any and all endangered and threatened species identified in the Data Base shall be required.

- (d) Clear cutting. Clear cutting of trees and shrubs is prohibited, except the minimum amount necessary for city approved roads, utilities, stormwater management facilities, structures, parking areas and native vegetation restorations. In those cases where clear cutting is necessary, any exposed, erosion-prone soils shall be stabilized.
- (e) Tree canopy. On sites that have a tree canopy, the essential character and density of that canopy shall be maintained. On sites where new development or redevelopment occurs, canopy cover shall be optimized wherever new development or redevelopment of a site occurs, and landscaping shall be incorporated to the greatest extent possible to achieve visual buffering and ecosystem function.
- (f) Slopes and shorelines. On very steep slopes, within one hundred (100) feet of the ordinary high water level, and within forty (40) feet of blufflines, removal of the shrub and canopy layer shall be prohibited, except the minimum amount necessary for utilities, transportation infrastructure, trails, native vegetation restorations, and development that cannot physically function without a riverfront location. In those cases where removal is necessary, any exposed, erosion-prone soils shall be stabilized.
- (g) Shoreline buffer. A natural shoreline buffer (naturally-occurring sand banks, rock outcrops and vegetated areas) of a minimum of one hundred (100) feet from the ordinary high water level shall be retained, restored or created to provide for optimum riparian ecosystem functions and to help minimize the impact of runoff, sediment and nutrients from adjacent lands into the water. Where appropriate, when restoring, redeveloping or stabilizing the river's edge, soil bioengineering techniques and native plantings shall be used alone or in combination with conventional engineered solutions. The visual impact of flood control structures shall be minimized through the use of native vegetation. Exceptions are allowed for development that cannot physically function without a riverfront location, such as barge loading/unloading facilities; such development need not provide a natural shoreline buffer between its river-dependent facilities and the river.
- (h) Invasive species. Removal of non-native invasive trees and shrubs and replacement with native trees and shrubs is encouraged. Non-native invasive woody plants include, but are not limited to, the following species: Amur maple (*Acer ginnala*), Norway maple (*Acer platanoides*), Japanese barberry (*Berberis vulgaris*, *Berberis thunbergii*), Siberian peashrub (*Caragana arborescens*), Russian olive (*Elaeagnus angustifolia*), Exotic honeysuckles (*Lonicera tartarica*, *Lonicera morrowii*, *Lonicera x bella*), White mulberry (*Morus alba*), Japanese knotweed (*Polygonum cupidatum*), Common buckthorn (*Rhamnus cathartica*), Glossy or alder buckthorn (*Rhamnus ~~frangula~~ alnifolia*), Black locust (*Robinia pseudoacacia*), and Siberian elm (*Ulmus pumila*). Any removal of non-native invasive trees and shrubs shall utilize best-management practices for erosion control. Total removal shall be prohibited if such removal will result in exposed, erosion-prone soils; in this case, removal of non-native invasive trees and shrubs shall be phased over several years to allow native replacement vegetation to take hold and prevent erosion.
- (i) Diseased and hazardous trees. The requirements of this section shall not prevent the removal of trees that are dying, dead, hazardous, or infected by a serious, contagious disease. A "hazardous tree" is one that has been structurally compromised by insects, disease, age, or storms and would be a safety risk to people or property if it fell. Replacement of trees removed for these reasons is not required unless the removal is done as part of a development requiring a tree preservation plan under paragraph (m) of this section.

~~Requirements of this section shall not prevent the removal of hazard trees. A "hazard tree" is a tree that exhibits damage resulting from insect, disease, age, or storm and, if it were to fall, would be a safety risk to people or property. Replacement of hazard trees with native trees or native cultivars of similar type, density and mature height shall occur within one planting year. Replacement vegetation shall be maintained for at least two (2) years by the property owner responsible for planting it or subsequent owners of property. Any replacement vegetation that dies or is found to be diseased during that two-year period shall be replaced within one (1) planting year.~~

- ~~(j) *Pruning and lawns.* The R~~requirements of this section shall not be deemed to prevent establishment and maintenance of urban lawns, decorative borders and gardens, maintenance pruning for the health of trees and shrubs, or trimming to remove nuisance conditions, provided visual buffering in summer, leaf-on conditions is maintained to the maximum extent possible. An exception shall be allowed for maintenance pruning of trees and selective cutting of shrubs to provide views from scenic overlooks on public property.
- ~~(k) *Tree canopy in CA4 Critical Area Urban Diversified Overlay District.* In the CA4 Critical Area Urban Diversified Overlay District commercial and industrial development and building additions, without housing as a mixed use, shall provide, as a minimum, two (2) square feet of landscaped area for every ten square feet of paving. At least sixty-seven (67) percent of such landscaped areas shall be covered by canopy trees at maturity. However, this requirement shall not apply to the area of downtown Saint Paul along the river's left descending bank from Chestnut Street to the Lafayette/Highway 52 bridge.~~
- ~~(e) An inventory of all existing trees of three (3) inches DBH or larger and native shrub areas within the limits of disturbance shall accompany any application for a building, fill or grading permit that causes disturbance to existing vegetation at the ground level. Such inventory shall show the location and species of each tree and native shrub area, and the diameter at breast height (DBH) of each tree. A similar inventory shall accompany any application for site plan or subdivision review and shall include the entire parcel(s) for which site plan or subdivision approval is being requested. For site plan or subdivision applications that contain areas greater than five thousand (5,000) square feet where no trees or shrubs will be disturbed in any way, an inventory need not be prepared for the undisturbed area, but the area must be clearly marked and maintained as an area where no disturbance will occur.~~
- ~~(l) *Inventory of trees and native shrub areas.* An inventory of trees and shrub areas and a tree preservation and replacement plan shall be required for any proposed development that would cause disturbance to existing vegetation at the ground level and that falls into any of the following categories of applications:~~
  - ~~(1) An application for a building, fill or grading permit in a CA1 Critical Area Rural Open Space Overlay District or CA2 Critical Area Urban Open Space Overlay District. The inventory shall accompany the permit application and shall cover the area of disturbance.~~
  - ~~(2) An application for site plan or subdivision review in a CA1 Critical Area Rural Open Space Overlay District or CA2 Critical Area Urban Open Space Overlay District. The inventory shall accompany the application and shall include the entire parcel or parcels for which site plan or subdivision approval is being requested. For applications containing areas greater than five thousand (5,000) square feet where no trees or shrubs will be disturbed in any way, the inventory need not be prepared for~~

the undisturbed area, but the area must be clearly marked and maintained as an area where no disturbance will occur.

- (3) An application for a building, fill or grading permit or for site plan or subdivision review in a CA4 Critical Area Urban Diversified Overlay District where proposed development would encroach on an area of existing trees and native shrubs greater than 10,000 square feet. The inventory shall accompany the application and shall cover the area of disturbance.

The inventory shall show the location and species of each tree over six (6) inches in diameter at breast height (DBH) and each native shrub area larger than five hundred (500) square feet.

- ~~(d) For development requiring a building, fill or grading permit, subdivision approval, and/or site plan review, compliance with the following standards is mandatory; in all other cases, compliance is encouraged.~~

- ~~(1) Vegetation removed due to development shall be replaced with native vegetation or native cultivars, to the extent possible, elsewhere on the site. Where native trees are removed, they shall be replaced at a ratio of a minimum of one to one (1:1) with native or native cultivar tree species of similar type, density and mature height. The highest priority for replacement vegetation shall be to prevent erosion and buffer the structure's visual impact on the river and river valley, with the other purposes under Sec. 68.243 following.~~

~~—— If on-site replacement of vegetation is not possible, replacement native or native cultivar vegetation shall be established within one planting year elsewhere in the Critical Area Overlay District. If a suitable off-site location cannot be determined, a fee in lieu thereof shall be assessed for the required replacement. The fee amount shall be equal to the current value of each tree or shrub based on the latest revision of "A Guide to the Professional Evaluation of Landscape Trees, Specimen Studies and Evergreens," prepared by the International Society of Arboriculture, plus ten (10) percent. All funds collected, and interest earned thereon, shall be maintained in a separate fund and shall be expended by the Director of Parks and Recreation exclusively for vegetation replacement within the Critical Area Overlay District. Replacement vegetation shall be maintained for at least two (2) years by the property owner responsible for planting it or subsequent owners of property. Any replacement vegetation that dies or is found to be diseased during that two-year period shall be replaced within one (1) planting year.~~

- ~~(2) Replacement plantings shall always be vegetation suitable for the site's ecology, and soil, light and water conditions.~~
- ~~(3) A natural shoreline buffer (naturally occurring sand banks, rock outcrops and vegetated areas) of a minimum of one hundred (100) feet from the ordinary high water level shall be retained, restored or created to provide for optimum riparian ecosystem functions and to help minimize the impact of runoff, sediment and nutrients from adjacent lands into the water. Where appropriate, when restoring, redeveloping or stabilizing the river's edge, soil bioengineering techniques and native plantings shall be used alone or in combination with conventional engineered solutions. The visual impact of flood control structures shall be minimized through the use of native vegetation. Exceptions are allowed for development that cannot~~

~~physically function without a riverfront location, such as barge loading/unloading facilities; such development need not provide a natural shoreline buffer between its river-dependent facilities and the river.~~

- ~~(4) Canopy cover shall be optimized wherever new development or redevelopment of a site occurs. Landscaping shall be incorporated to the greatest extent possible to achieve visual buffering and ecosystem function.~~
- ~~(5) New development or redevelopment of a site adjacent to publicly owned nature preserves, sanctuaries and other spaces specifically dedicated to the preservation of vegetation in its natural state shall use local genotypes, not horticultural varieties or cultivars of native species, to the greatest extent possible. The list of such sites shall be maintained by the planning administrator.~~

(m) Tree Preservation Plan: tree and shrub preservation and replacement. For any development that requires an inventory of trees and native shrub areas, a tree preservation and replacement plan shall also be submitted showing compliance with the following standards:

- (1) The tree preservation plan must include: the information required on the inventory, locations of existing and proposed buildings and paving, existing and proposed grading, tree protection measures, and replacement trees and shrubs.
- (2) Trees over six (6) inches DBH and native shrub areas larger than five hundred (500) square feet removed due to development shall be replaced with native vegetation or native cultivars, to the extent possible, elsewhere on the site, except for trees and shrubs in areas to be occupied by streets, buildings, driveways, required accessory parking, or within fifteen feet of a building foundation. Where native trees are removed, they shall be replaced with native or native cultivar tree species of similar type, density and mature height. Shrubs shall be replaced on a one-to-one basis. Trees between six (6) and eighteen (18) inches DBH shall be replaced on a one-to-one basis. Trees between eighteen (18) and twenty-four (24) inches shall be replaced on a two-to-one basis, that is, two (2) replacement per tree removed. Trees larger than twenty-four inches DBH shall be replaced on a three-to-one basis, that is, three (3) replacement trees per tree removed. The highest priority for replacement trees and shrubs shall be to prevent erosion and buffer the structure's visual impact on the river and river valley, along with the other purposes under Sec. 68.243.
- (3) Replacement plantings shall always be suitable for the site's ecology, soil, light, and water conditions.
- (4) Deciduous replacement trees of nursery stock shall be at least two and one-half (2½) caliper inches and of a species similar to the tree(s) lost or removed. At the discretion of the zoning administrator, coniferous trees may replace deciduous trees that are lost or removed.
- (5) Coniferous replacement trees shall be at least six (6) feet in height and of a species similar to the tree(s) lost or removed.
- (6) Replacement trees or shrubs shall be planted no more than twelve (12) months after the removal of original trees or shrubs or by whatever deadline is set by the permitting or approval authority.
- (7) Replacement vegetation shall be maintained for at least two (2) years by the property

owner responsible for planting it or subsequent owners of property. Any replacement vegetation that dies or is found to be diseased during that two-year period shall be replaced within one (1) planting year.

- (8) If on-site replacement of trees and shrubs is not possible, replacement native or native cultivar trees and shrubs shall be established elsewhere in the Critical Area Overlay District within one planting year. If a suitable off-site location cannot be determined, a fee in lieu thereof shall be assessed for the required replacement. The fee amount shall be equal to the current value of each tree or shrub based on the latest revision of "A Guide to the Professional Evaluation of Landscape Trees, Specimen Studies and Evergreens," prepared by the International Society of Arboriculture, plus ten (10) percent. All funds collected, and interest earned thereon, shall be maintained in a separate fund and shall be expended by the Director of Parks and Recreation exclusively for vegetation replacement within the Critical Area Overlay District.

(j) **Sec. 68.244. Protection of water quality.**

- (a) *Generally.* Development shall occur so that surface and subsurface water is not adversely affected by contaminants. Water quality should meet or exceed state standards. No use shall be permitted which is likely to cause pollution of water, as defined in Minnesota Statutes, Section 115.01, Subd. 13 unless adequate safeguards, approved by the state pollution control agency, are provided.

(b) *Contamination.*

- (1) Development shall not be permitted on wet soils, very shallow soils, soils with high shrink-swell or frost action potential unless it is shown that appropriate construction techniques capable of overcoming the restrictive condition will be utilized.
- (2) Individual sewage treatment systems, as defined by Minnesota Rule 7080.0020, shall not be permitted where public sewer systems are available. In areas where public sewers are not available, such individual sewage treatment systems shall be set back from the ordinary high water level at least seventy-five (75) feet and setback from the bluffline at least forty (40) feet.
- (3) Private wells shall be placed in areas not subject to flooding and up slope from any source of contamination. Wells already existing in areas subject to flooding shall be floodproofed in accordance with accepted engineering standards as defined in the Minnesota State Building Code.
- (4) Commercial or industrial land uses requiring the storage or production of materials or wastes that may create a pollution hazard for groundwater or surface water shall be prohibited unless the quality of both the groundwater and surface waters can conform to all applicable state and federal standards, criteria, rules and regulations.

(c) *Runoff.*

- (1) Stormwater runoff controls for development shall be in accordance with standards set forth in Chapter 52, Stormwater Runoff, of the Legislative Code.
- (2) Development shall be planned and conducted to minimize runoff rate and volume, and to improve quality of runoff, through site design and appropriate best management practices. Best management practices are described in the most recent versions of Minnesota Pollution Control Agency publications "Minnesota Stormwater Manual" and "Protecting Water Quality in Urban Areas." Best management practices

- must be adapted to the site and can be adopted from other sources; however, they must be similar in purpose and as effective and stringent as the Minnesota Pollution Control Agency's best management practices. Other sources include current versions of "Minnesota Small Sites Urban Best Management Practices Manual," Metropolitan Council Environmental Services, and "Erosion Control Design manual," Minnesota Department of Transportation.
- (3) Sediment shall be controlled and retained within the development site area in accordance with appropriate best management practices as described and referenced in subsection (2).
  - (4) Stormwater runoff released to a drainage system shall be directed in such a manner as to travel over vegetated areas, wherever feasible, rather than across ~~established impervious~~ surfaces. Stormwater runoff may be directed to wetlands only when free of silt, debris and chemical pollutants and only at rates which will not disturb vegetation, increase turbidity or impair the wetland.
  - (5) Development near steep slopes shall not result in increased runoff onto those slopes sufficient to damage slope integrity, vegetation, or structures thereon. ~~Except for necessary erosion control in accordance with appropriate best management practices,~~ Stormwater management facilities shall not be constructed on an bluff face, within forty (40) feet of a bluffline, on very steep slopes, or within a distance from the top of a very steep slope equal to the height of the very steep slope, to a maximum of forty (40) feet, except where such facilities are needed to serve existing development or to control an existing erosion problem. Facilities shall be built in accordance with appropriate best management practices.
  - (6) Plans shall be submitted to the planning commission for any development placed landward from dikes, floodwalls or levees which is below the flood protection elevation of the dikes, floodwalls or levees. The plans must provide measures to ensure that floodwaters do not back up onto the development from stormwater drainage systems.

**Sec. 68.245. Protection of views.**

- (a) *Generally.* Development shall be conducted so that, consistent with city plans and an urban setting, the design of new structures reflects the river corridor's natural character and responds to topography by preserving critical public and panoramic views of and from the river and bluffs. Site plans for development shall ensure that structure placement, buffering, landscaping, and re-vegetation are compatible with the character and use of the river corridor in the particular district; provide opportunities for open space establishment and for public viewing of the river corridor whenever applicable; maintain riverbanks, bluffs and scenic overlooks in their natural state, and minimize interference with views of and from the river, except for specific uses requiring river access; and provide for the screening of existing development which constitutes visual intrusion, wherever appropriate.
- (b) *View corridors.* In the CA3 Critical Area Urban Developed Overlay District and in the CA4 Critical Area Urban Diversified Overlay District, view corridors the width of the street right-of-way shall be protected, and extended when reasonably possible, to the river valley from streets essentially perpendicular to the river.
- (c) *Height of structures.* For development where the elevation of existing natural topography is altered by more than five (5) feet, the grade from which the height of structures is



measured shall be the elevation of the ground surface prior to excavation or filling. The height of structures shall be limited as follows:

- (1) thirty (30) feet maximum in the CA1 Critical Area Rural Open Space Overlay District and in the CA2 Critical Area Urban Open Space Overlay District;
  - (2) In the CA3 Critical Area Urban Developed Overlay District and in the CA4 Critical Area Urban Diversified Overlay District:
    - a. thirty-six (36) feet maximum within two hundred (200) feet of the river ordinary high water level;
    - b. forty-eight (48) feet maximum within five hundred (500) feet of the river ordinary high water level;
    - c. thirty-six (36) feet maximum between the bluff toe and bluffline and within one hundred (100) feet landward of a bluffline;
    - d. forty-eight (48) feet maximum within three hundred (300) feet riverward of the bluff toe;
    - e. in the remainder of CA3 and CA4 Critical Area Overlay Districts not specified in (2)a-d above, forty-eight (48) feet maximum in the CA3 Critical Area Urban Developed Overlay District and sixty (60) feet maximum in the CA4 Critical Area Urban Diversified Overlay District.
- (d) *Exceptions to height limits for specific areas.* The following exceptions to the height limits in paragraph (c) above shall be permitted:
- (1) the area of downtown Saint Paul along the river's left descending bank from Chestnut Street to the Lafayette/Highway 52 bridge, where the height of structures shall be limited as follows:
    - a. fifteen (15) feet maximum between Wabasha Street and one hundred twelve (112) feet east of Robert Street; within Kellogg Mall, height shall be measured from the established grade of the park;
    - b. ninety (90) feet above Saint Paul Datum between Wabasha Street and St. Peter Street (extended);
    - c. thirty-six (36) feet maximum within four hundred (400) feet northeast of Chestnut Street, with sixty (60) feet maximum allowed on the block bounded by Chestnut Street, Eagle Parkway and Exchange Street;
  - (2) the area of the West Side Flats bounded by the river, Wabasha Street, Plato Boulevard, and Robert Street, where the height of structures shall be limited as follows:
    - a. thirty-six (36) feet maximum within two hundred (200) feet of the river ordinary high water level;
    - b. forty-eight (48) feet maximum within three hundred (300) feet of the river ordinary high water level;
    - c. sixty (60) feet maximum in the remainder of the area, with seventy-two (72) feet maximum allowed within two hundred (200) feet of the centerline of Filmore Avenue;

- (3) the Upper Landing area along the river's left descending bank from the Smith Avenue High Bridge to Chestnut Street within five hundred (500) feet of the river ordinary high water level, where the height of the structures shall be limited to sixty (60) feet maximum.
- (4) the Victoria Park area bounded by Otto Avenue, Shepard Road, Montreal Way extended, and the railroad tracks;
- (5) the ADM elevators area bounded by Randolph Avenue, Shepard Road, Drake Street extended and the railroad tracks;
- (6) the area east of Mississippi River Boulevard between Ford Parkway and Highland Parkway.
- (e) *Exceptions to height limits for specific structures.* The following structures are exempt from the height limits in paragraphs (c) and (d) above:
  - (1) bridges, bridge approach roadways, stairways, structures needed for transportation safety, essential service distribution systems, transmission services, navigational and industrial uses requiring river access (but only to the extent a taller structure is needed for a river-dependent operational process), and restoration or reconstruction of historical structures that are locally designated or on the inventory of the State Historical Society or the National Register of Historic Places;
  - (2) publicly-owned, medium-scaled landmark civic structures may be permitted with a conditional use permit.

**Sec. 68.246. Dedication of land for parks, open space, and river access.**

Pursuant to Minn. Stat. Sec. 462.358, Subd. 2, as amended and as otherwise provided here and in section 69.511, parkland dedication requirements, of this Code, for subdivision and development of land, the owners, subdividers, or developers of the land shall convey to the city or dedicate to the public use a reasonable portion of the land for public use for parks, playgrounds, trails, open space, river access, or conservation purposes according to the provisions and requirements of section 69.511. In addition to the criteria for determining the location and configuration of any land dedicated contained in section 69.511(a), the city council shall consider areas adjacent to the river, areas that provide riverfront access or public views of the river and river valley, and areas of riverbanks, floodplains, wetlands, natural ponds, creeks, streams, or bluffs.

- ~~(a) *Generally.* Pursuant to Minn. Stat. Sec. 462.358, Subd. 2, as amended and as otherwise provided below, for platting of land, for lot splits for multiple family residential development, for lot splits involving more than one half acre of land, and for any development under the provisions of the PD Planned Development District, the owners, subdividers, or developers of the land shall convey to the city or dedicate to the public use a reasonable portion of the land for public use for parks, trails, open space, river access, or conservation purposes according to the requirements of this section and the purpose of this article stated in section 68.211(b). A phased development shall be considered one development for this provision. The Director of Parks and Recreation, Parks Commission, or City Council shall determine the location and configuration of any land dedicated, taking into consideration the suitability and adaptability of the land for its intended purpose, future needs of the proposed development, and following criteria:~~
  - ~~(1) conformance with the city's adopted comprehensive plan and development or project plans for sub-areas of the city;~~

- ~~(2) areas identified for protection or restoration in an adopted city, regional, state, or national plan;~~
  - ~~(3) areas that connect existing components of the open space network;~~
  - ~~(4) areas that provide riverfront access or public views of the river and river valley;~~
  - ~~(5) areas adjacent to the river or existing public parks, trails, or open space;~~
  - ~~(6) areas representing significant landforms, native plant communities, sensitive habitat, or historical events;~~
  - ~~(7) areas containing vegetation identified as endangered or threatened, or that provide habitat for animals identified as endangered, threatened, or of special concern under 15 U.S.C. § 1531 et. seq. or Minn. Stat. § 84.0895, and rules adopted under these respective laws;~~
  - ~~(8) areas of riverbanks, floodplains, wetlands, natural ponds, creeks, streams, or bluffs;~~
  - ~~(9) land dedicated solely for roadway, stormwater retention, or utility purposes, or otherwise unsuitable for the purposes listed above, shall not be accepted;~~
  - ~~(10) dedicated land shall be accessible to the public served unless the Director of Parks and Recreation, Parks Commission, or City Council determines that the dedicated land is an environmentally or ecologically sensitive area for which public access would be detrimental.~~
- ~~(b) *Parkland dedication formula.* For residential land, the property owners, subdividers or developers shall dedicate twelve (12) percent of the total land area, on a one time basis, for the purposes listed in subdivision (a) of this section. For commercial and industrial land greater than one (1) acre in size or adjacent to the river, the property owners, subdividers or developers shall dedicate twelve (12) percent of the total land area, on a one time basis, for the purposes listed in subdivision (a) of this section.~~
- ~~(c) *Parkland dedication option; land and/or cash dedication.* At the discretion of the Director of Parks and Recreation, Parks Commission, or City Council, the owners, subdividers, or developers of property subject to this section shall contribute an amount in cash, in lieu of all or a portion of the land required under subdivisions (a) and (b) of this section or an equivalent value of improvements as approved by the Director of Parks and Recreation, Parks Commission, or City Council. The amount of cash shall be based upon the County Assessor's estimated market value of the total land area, at the time of city approval of the subdivision or PD Planned Development District, multiplies by the percentage of land that would otherwise be dedicated. Notwithstanding the dedication formula in subdivision (b) of this section, the maximum amount of cash dedication required under this section shall not exceed three thousand dollars (\$3000.00) per dwelling unit. The City Council may review this maximum cash dedication amount on a yearly basis and adjust it for inflation. In determining whether land dedication or cash in lieu thereof will be required, the Director of Parks and Recreation, Parks Commission, or City Council shall consider without limitation the suitability and adaptability of land within the site for the purposes listed in subdivision (a) of this section and criteria for land dedication in subdivision (a) of this section.~~
- ~~(d) *Parkland dedication option; private land for public use.* The City Council may, at its discretion, waive all or a portion of the above land or cash dedication required under (b) or (c) of this section and enter into an agreement for the private development and/or~~

~~maintenance of land for public use for parks, trails, open space, river access, or conservation purposes within the proposed subdivision or development, subject to the following conditions:~~

- ~~(1) The land area or value of the land and improvements privately developed and maintained for parks, trails, open space, river access, or conservation purposes must at least equal that required under this ordinance.~~
  - ~~(2) Land, facilities, and improvements accepted under this provision shall be accessible to the public in a manner similar to public land.~~
  - ~~(3) The City Council must find, after recommendation of the Director of Parks and Recreation and the Parks Commission, that such land and improvements will serve the purposes listed in subdivision (a) of this section; and~~
  - ~~(4) The City and the owners, subdividers, or developers of the land must have executed a parkland development agreement insuring that specified land shall be developed and maintained by the owners, subdividers, or developers, and any and all successors in interest thereof, of any type whatsoever, which includes, but is not limited to heirs and assigns, for the purposes listed in subdivision (a) of this section. The owners, subdividers, or developers must include a covenant running with the specified land indicating that the land to be developed and maintained for the purposes listed in subdivision (a) will revert to the City in the event of a failure to comply with this requirement. When a recordable covenant concerning the ownership, maintenance or use of private areas and facilities for parkland development is required, the covenant shall be submitted to the City for approval. Such covenant shall be recorded prior to or at the same time as the subdivision, and prior to final city approval of a PD Planned Development District.~~
- ~~(e) *Parkland dedication; conveyance standards.* Prior to dedication and conveyance of the required property to the City, the owners, subdividers or developers shall provide the City with an acceptable abstract of title or registered property abstract for all land dedicated for park purposes, evidencing good and marketable title without liens or encumbrances of any kind except those encumbrances which the City Council has approved or required in connection with the proposed plat. The foregoing abstracts shall otherwise evidence good and marketable title free and clear of any mortgages, liens, encumbrances, assessments and taxes. For subdivision of property, for any required dedication of land that is not formally dedicated to the City with a final plat, the landowner shall record all deeds for conveyance of the property to the City prior to or at the same time as recording the final plat or other appropriate subdivision documents. Deeds for conveyance of property shall be recorded prior to final City Council approval of a PD Planned Development District.~~
- ~~(f) *Parkland dedication; parkland development special fund.* All funds collected pursuant to the parkland dedication requirements of this section, and interest thereon, shall be deposited in a parkland development special fund and used solely for the acquisition and development or improvement of lands dedicated for public use for parks, trails, open space, river access or conservation purposes in the Critical Area in close proximity to the subdivision or development. Such funds may not be used for ongoing operations or maintenance. All fund expenditures shall be approved by the City Council upon recommendation of the director of parks and recreation in consultation with the parks and recreation commission. All fund contributions shall be paid as a condition of final City Council approval of any plat or PD Planned Development District and as a condition of~~

~~final City approval of any lot split, except, when approved by the City Council, in the case of a development constructed in “phases,” funds otherwise required for each construction phase of the development shall be collected prior to obtaining the first building permit for that phase. Payments made to satisfy the requirements of this section shall be made separately from any payments for building permits or any other payment.~~